

DECISION

Dispute Codes: *OPR, OPC, CNR, MNR, DRI, CNC, OLC, ERP, RP, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to notices to end tenancy for non payment of rent and for cause. The landlord also applied for a monetary order for unpaid rent. The tenant applied for an order to cancel the notices to end tenancy and to dispute a rent increase. The tenant also applied for an order seeking landlord's action to comply with the *Act* and conduct repairs. Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent?
Should the landlord be ordered to conduct repairs?

Background and Evidence

This month to month tenancy started on February 23, 2009. Rent is \$1,135.00 and is due on the first day of each month.

The landlord stated that right from the start of the tenancy the tenant was late paying rent. The tenant also paid rent in instalments and was always behind. The landlord gave the tenant several verbal warnings and two notices to end tenancy for unpaid rent, on November 01, 2009 and January 25, 2010. At the time of the hearing, the tenant still owed \$290.00 for May. The tenant also paid rent for June on June 22 and for July on July 22, 2010.

The tenant disputed the amount of rent owed for May but did not dispute that rent was late for the last three months. On June 07, 2010 the landlord served a one month

notice to end tenancy for cause. The reasons for the notice are that the tenant is repeatedly late paying rent and has caused extraordinary damage to the unit.

The tenant stated that he had informed the landlord right at the start of the tenancy that he would be late on rent payments. He stated that he looks after foster children and is constantly battling the Ministry for his entitlement. He also stated that the mail person is late sometimes and that the landlord comes earlier than the date he is told to come by to collect rent.

Analysis

In order to support the notice to end tenancy, the landlord must prove that one or more of the reasons for the notice to end tenancy applies. Based on the testimony of both parties, I find that the tenant was repeatedly late paying rent. Even if he had informed the landlord that he would be paying rent late, the landlord indicated his disapproval and put the tenant on notice at least twice by serving the tenant ten day notices to end tenancy. Despite the verbal warnings and notices the tenant continued to pay rent late.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. The tenant agreed that he was late paying rent for the last three months. Therefore, I find that the landlord has proven one of the reasons to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

Under the provisions of section 55(1), I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord stated that the tenant owed \$290.00 for May. The tenant argued that she had already paid \$100.00 of this amount to the landlord and owed the landlord \$190.00. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts

in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant acknowledged the debt but did not have any evidence that she had paid the landlord \$100.00 of this debt. Therefore, I find that the landlord is entitled to \$290.00 for unpaid rent for May.

Since the tenancy is coming to an end, the remainder of the tenant's application is no longer relevant and accordingly dismissed. The landlord has proven his claim and is therefore entitled to the recovery of the filing fee of \$50.00.

I find that the landlord has established a claim of \$290.00 for unpaid rent and \$50.00 for the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$340.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$340.00**.

The tenant must bear the cost of filing his application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 28, 2010.

Dispute Resolution Officer